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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter)	
)	
Implementation of Section 302 of the)	DOCKET FILE COPY ORIGINAL
Telecommunications Act of 1996)	CS Docket No. 96-46
)	
Open Video Systems)	
)	
)	
In the Matter of)	
)	
Telephone Company-Cable)	CC Docket No. 87-266
(Terminated))	
Television Cross-Ownership Rules,)	
Sections 63.54-63.58)	

COMMENTS OF AT&T CORP.

Pursuant to the Commission's Report and Order and Notice of Proposed Rulemaking in the above-referenced proceeding,¹ AT&T Corp. ("AT&T") respectfully files these Comments.

The NPRM seeks comment on how the Commission should implement the requirements of the Telecommunications Act of 1996 (the "1996 Act")² with respect to the provision of video programming by means of an "open video system" that will promote competition and increase customer

¹ Implementation of Section 302 of the Telecommunications Act of 1996 Open Video Systems, Report and Order and Notice of Proposed Rulemaking, CS Docket No. 96-46, released March 11, 1996 ("NPRM").

² Pub. L. No. 104-104, 110 Stat. 56, adopted February 8, 1996.

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choice. While the NPRM seeks comment on a myriad of issues to ensure nondiscriminatory access to open video systems pursuant to just, reasonable and nondiscriminatory rates, terms and conditions of carriage, AT&T limits its comments to the issue of whether open video system operators should be permitted to offer bundled packages of local and long-distance telephone service, video programming delivery, and data transmission over integrated networks.³ AT&T opposes the bundling of non-competitive services -- including especially local telephone service offered by incumbent local carriers -- with competitive services.⁴ AT&T does not oppose the joint marketing of such services, however, under appropriate joint cost allocation rules.⁵

³ NPRM at para. 66.

⁴ As used here, "bundling" means the offering of multiple products and/or services for a single price. "Bundled" products and/or services are either not available separately, or can be obtained separately only at an aggregate price that differs from the price for the bundled offer. This definition is consistent with the Commission's notion of bundling in its Computer Inquiry proceedings. See, e.g., Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), Final Decision, 77 F.C.C.2d 384, 442 (1980) ("Final Decision").

⁵ Unlike bundling, where one product or service may bear some or all of the costs of the other products or services included in the offer, joint marketing denotes the sharing of marketing costs, but not the costs of the products or services themselves. See Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), Report and Order, 104 F.C.C.2d 958, 1012 (1986) ("Third Computer Inquiry Order").

As a general matter, if the products or services included in a bundled offer are also available separately in effectively competitive markets, then the offer of those products or services in a single package at a single price may further competition, by providing customers with a choice of purchasing the integrated offer, or of buying the component products or services individually. However, where the market for one of the products or services included in the bundled offer is not competitive, such bundling can inhibit competition, by allowing the monopoly provider to create bundled offers that cannot be matched by the individual offerings of the providers of the competitive products and services.

It was precisely this concern that led the Commission to require the unbundling of CPE from regulated transmission services. In its Computer Inquiry proceeding, the Commission found that "[i]n regulated markets characterized by dominant firms, there may be an incentive . . . to use bundling as an anti-competitive marketing strategy, e.g., to cross-subsidize competitive by monopoly services, that restricts both consumer freedom of choice as well as the evolution of a competitive marketplace. Restricting bundling practices in such markets reduces these impediments to improve consumer welfare."⁶

⁶ Final Decision, 77 F.C.C.2d 384, 443 n. 52 (1980). Because this concern does not arise in markets that are competitive, the Commission has now properly proposed to withdraw this requirement from carriers that have been classified as non-dominant. Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g)

AT&T therefore opposes rules that would allow open video system operators to bundle service as to which they exercise market power with other services. However, the Commission need not restrict a provider's ability jointly to market its non-competitive and its competitive services. As long as the components of the offer are also available from the provider on an individual basis, and the costs of such joint marketing effort are appropriately assigned or allocated in accordance with joint cost allocation rules,⁷ joint marketing is not an improper, anticompetitive practice. To the contrary, when such safeguards are established, joint marketing allows providers to offer the comprehensive solutions desired by customers, while achieving marketing and cost efficiencies.⁸

(footnote continued from previous page)

of the Communications Act of 1934, as amended, Notice of Proposed Rulemaking, CC Docket No. 96-61, released March 25, 1996, paras. 84-90.

⁷ AT&T proposes that the Commission extend its existing cost allocation rules, adopted to implement the unbundling requirements under the Computer Inquiry proceeding, to the joint marketing by LECs of the non-competitive and competitive services subject to the NPRM. See NPRM at para. 66; see also Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, Report and Order, 2 FCC Rcd 1298 (1987).


⁸ Third Computer Inquiry Order, 104 F.C.C.2d at 1012.

WHEREFORE, for the reasons stated above, the Commission should prohibit the bundling by open video system operators of non-competitive services with their competitive offerings. The Commission should, however, allow for the joint marketing of competitive and non-competitive services, under appropriate cost allocation rules.

Respectfully submitted,

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